

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-7212-99

DARosen

date:

to: Chief, Examination Division, Manhattan
Attn: International Examiner [REDACTED]

from: District Counsel, Manhattan (CC:NER:MAN)

subject:

[REDACTED]
Taxable Years Ended December 31, [REDACTED] and December 31, [REDACTED]
(Form 1120-F)

Consent to Extend the Statute of Limitations on Assessment
STATUTE OF LIMITATIONS EXPIRES [REDACTED]

UIL No. 6501.08-17

We have been asked for assistance in determining the appropriate language to be used on the consent to extend the statute of limitations on assessment and collection for [REDACTED]'s taxable years ended December 31, [REDACTED] and December 31, [REDACTED]. We were not provided with several key documents, including the Trade Register (Registre de Commerce/Handelsregister) evidencing the acquisition of [REDACTED] by [REDACTED]. Consequently, our advice relies upon your representations concerning the nature of [REDACTED]'s Acquisition by [REDACTED], as provided to you by the taxpayer's accountant, as well as certain documents in the public domain cited herein.

FACTS

The Manhattan District is currently conducting an examination of [REDACTED] (E.I.N. [REDACTED]) for income tax for the taxable years ended December 31, [REDACTED] and December 31, [REDACTED]. A consent to extend the statute of limitations on assessment for [REDACTED], for income tax for the taxable years ended December 31, [REDACTED] and December 31, [REDACTED] is currently being sought by the International Examiner.

and the Tender Offer

Domiciled in [REDACTED], [REDACTED] is one of the two parent companies of [REDACTED], an international [REDACTED] group of over [REDACTED] companies throughout the world operating in the fields of [REDACTED]. See [REDACTED].

On [REDACTED], [REDACTED] dated [REDACTED]. On [REDACTED], [REDACTED] launched the Tender Offer, a public offer to acquire up to [REDACTED] percent of the outstanding voting shares of [REDACTED], also domiciled in [REDACTED]. *Id.* The tender offer was structured as an exchange offer of [REDACTED] common shares for [REDACTED] common shares and closed on [REDACTED] with shareholders of [REDACTED] tendering [REDACTED] percent of [REDACTED]'s outstanding voting shares. *Id.* As a result of this transaction, [REDACTED] acquired control of [REDACTED]. *Id.* By [REDACTED], [REDACTED] was scheduled to have contributed all of its shares in [REDACTED] into the [REDACTED], thus making [REDACTED] a subsidiary of both [REDACTED] and [REDACTED]. *Id.* at n.8.

[REDACTED]'s [REDACTED] Process¹

As a result of the acquisition of [REDACTED] by [REDACTED], [REDACTED] was scheduled to terminate [REDACTED] activities in the United States by the end of [REDACTED] and close the [REDACTED] branch. [REDACTED]. In place of the [REDACTED] branch, [REDACTED] planned to establish subsidiaries, [REDACTED] and [REDACTED], which would absorb all [REDACTED] activities of the branch except for [REDACTED] and [REDACTED] services. *Id.*

Merger of [REDACTED] with [REDACTED] and Name Change

On [REDACTED], [REDACTED], also domiciled in [REDACTED], was merged into [REDACTED]. Certificate of [REDACTED] Public Notary, dated [REDACTED]. As a consequence of the merger, [REDACTED] ceased to exist as a separate corporation, and all rights and obligations of [REDACTED] were transferred to [REDACTED].

¹The scope of this memorandum is limited to the proper language to be employed in preparing a consent to extend the statute of limitations on assessment. However, the [REDACTED] process discussed *infra*, including the closure of the [REDACTED] branch, may give rise to a problem locating a domestic individual who has the authority to sign the consent to extend the statute of limitations on assessment on behalf of the taxpayer. If in fact this becomes an issue, please advise our office.

[REDACTED], which survived the merger. Id. On the same date, [REDACTED] changed its corporate name to [REDACTED]. Id. The [REDACTED]'s registered office address and [REDACTED] Trade Register number remain unchanged. Id.

ISSUE

What specific language should be used on the consent to extend the statute of limitations on assessment for [REDACTED] for the taxable years ended December 31, [REDACTED] and December 31, [REDACTED]?

DISCUSSION

As set forth above, [REDACTED] survived both the acquisition by [REDACTED] and its subsequent merger with [REDACTED], changing its name to [REDACTED]. The name of the taxpayer appearing on the Form 872 should be as follows:

"[REDACTED] (E.I.N. [REDACTED] or new EIN), formerly known as [REDACTED] (E.I.N. [REDACTED])"

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form

872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

If you have any questions, please contact the attorney assigned to this matter, Daniel A. Rosen, at (212) 264-5473, extension 262.

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By: _____
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